IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8501 OF 2007

Kakde Construction Co. ...Petitioners
Versus
Mr.Ramsingh Dhondusingh Pardeshi ....Respondents

C.G.Gavnekar for the petitioners.
S.A.Rahman (Tamboli) for respondent no.1.

CORAM: S.C.DHARMADHIKARI, J.

26.11.2007

P.C. :

1. This matter is mentioned as the petitioners stated before me that the lower appellate court had stayed its own order till today. However, the ongoing construction activity will be affected, if the order of stay granted by the lower appellate court is not continued or the matter is not taken up for admission.

2. My attention is invited to para 18 of the impugned order and it is urged that several persons have entered into agreements with the petitioner and all of them will be prejudicially affected.

3. Hence by consent of parties matter is taken up for admission. The compilation handed in by the respondent is also perused. The matter is decided finally with the consent of both sides.

4. The lower appellate court has upon an Appeal challenging the interim order of the Trial Court rejecting the application of the respondent, reversed the order and held that prima-facie case is made out by the respondent, balance of convenience is in his favour and irreparable loss will be caused to him if the interim injunction as prayed in the suit is not granted.

5. It is this order which is subject matter of challenge.

6. The Appeal was filed by the respondent/ original plaintiff (Miscellaneous Civil Appeal No.226 of 2007) against an order below Exhbit 5 in Regular Civil Suit No. 619 of 2007 decided on 12.6.2007 by the Civil Judge, Senior Division, Pune.

7. The plaint allegations proceed on the basis that a notice dated 21.6.1995 is sent by the present respondent to the petitioners and the vendors of the petitioners. The case of the respondent is that he is the grandson of one Ramchandra Rupchand Pardeshi. During 1901 Ramchandra purchased the shop of his brother. The municipality assessed the property. It is alleged that Ramchandra Pardeshi was in possession of CTS No.22, Ganesh Peth also. In the year 1907 part of the property was sold to late Pandurang Gyanu Sonawane. After the city survey was completed the CTS Number was assigned to this property and it admeasures 145 sq.yds. It is admitted by the respondent that the property has changed hands from the Sonawane's from time to time.

8. It is also not disputed by the respondent that one application was given on 25.8.1992 by Dattatraya Pandurang Sonawane for survey and measurement of CTS No.23 and that measurement was done in the presence of Respondent, who signed the statement in his own handwriting on 12.1.1993. It is alleged that this measurement is done by the concerned officer at the

instance of Dattatray Pandurang Sonawane who suppressed the sale deed of 1907. Thus, the owner of CTS No.23 has encroached upon the land of Ramsingh Pardeshi who is the owner of CTS NO.23 to the extent of 10x96 sq.ft.

9. It is upon this notice which was replied by the present petitioners, who denied the contents therein and relied upon a Sale Deed that the suit was filed by the Respondent. The Sale Deed is with the present petitioners and executed alongwith their vendors Vimalchand Devraj Bamboli and Mohanlal Sohanraj Bamboli. The Sonawane family was the owner and predecessor in title of these Bambolis. It is on this basis that the plaint has been filed and perpetual injunction claimed against the present petitioners. The Trial Court on an application for temporary injunction in this suit has specifically observed that a prima-face case has not been made out inasmuch as Ramsingh is the owner of CTS No.22. It has been observed by the Trial Court that the measurements have been done in the presence of Ramsingh Pardeshi. In para 10 and 11 of the order of the Trial Court the said fact has been specifically referred. It has also been

observed in para 9 of the order of the Trial Court that, no document of title is produced by the respondent plaintiff.

10. These findings of the Trial Court have been reversed by the lower appellate court. However, it is pertinent to note that even in the lower appellate court the undisputed facts have been noted. Ramsingh was the owner of CTS No.23 which, admeasures according to the lower appellate court, from 129.4 sq.mts to 469.96 sq.mts. It referred to the fact that Respondent alienated western portion in favour of Dnyanoba Sadashiv Sonawane. That registered sale deed is dated 1.7.1907. It is the case of the respondent that except this portion the predecessors in title have not alienated any portion of CTS No.23. It is observed is that the property card is prepared by the present petitioners after they joined hands and colluded with the City Survey Department. Now this finding of the lower appellate court is not based on any prima-facie material. Infact the plaint allegations proceed on the basis that a statement has been recorded of Ramsingh Pardeshi. That is not disputed by the plaintiff

either. There is no allegation of any collusion with the City Survey Department by the present petitioners even during the life time of the Respondent's predecessor. I have perused the plaint averments. There is no specific plea raised in that behalf. In such circumstances, when the earlier alienation is not disputed but now that the measurement of 1993 is sought to be challenged as being incorrect, then, prima-facie from 1993 till date the same having been undisputed is a fact which must weigh at the stage of granting a temporary injunction.

11. Interim relief is not granted to persons who are not diligent enough and do not approach the court in time. In para 11 there is contradictory finding recorded by the lower appellate court. In such circumstances when the sale deed in favour of the present petitioners is based upon the sale deed between the Sonawane's and Bamboli's dated 13.4.1988 the order of Superintendent of Land Records, Pune dated 31.8.1995 is based on the statement of the respondent, then, prima-facie there was no case made out of injunction restraining the construction activity. It is not as if

the respondent is deprived of use and occupation of his property so also its peaceful enjoyment. Infact, the findings recorded by the lower appellate court itself would justify not granting any interim relief. A reference to para 15, 16 and 18 is enough to demonstrate this aspect. In such circumstances, and when now the respondent seeks to dispute the title of Sonawane's all that could be directed, apart from expeditious hearing of the suit, is that the petitioners before me would file an Undertaking before the Trial Court stating clearly that the construction activity so also alienation of any portion of the suit property or the construction thereon would be subject to the final outcome of the suit and each of the persons who claim through the present petitioners would be informed about the pendency of the suit and the undertaking. Thus, an undertaking in widest terms which would bind even the nominees, assignees and successors in title of the present petitioners would be enough to protect the rights of both sides.

12. In the result, the Writ Petition is allowed. The order of the lower appellate court dated 1.11.2007

is set aside. There was noinjunction running from 12.6.2007. In such circumstances, the order directing filing of an Undertaking by the petitioners in the above terms would sufficiently protect the rights of the parties. Accordingly, upon the petitioners filing an Undertaking in the Trial Court within a period of fifteen days from the date of the receipt of this order, it is directed that the construction activity shall continue at their own risk and subject to the final orders in the suit.

13. All observations by the courts below and this court are tentative and prima-facie and shall not influence the court while trying the suit which must be decided on the evidence, oral and documentary produced before it. Petition is allowed in above terms. No costs.

****